

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

OTIS PAYTON, Complainant,

VS.

FISHERCREST APARTMENTS and MR. AUGLAND, Respondents.

CP# 03-87-15960

THIS MATTER, a complaint filed by OTIS PAYTON (Complainant) with the Iowa Civil Rights Commission (Commission) charging FISHERCREST APARTMENTS and MR. AUGLAND (Respondents) with discrimination in housing on the basis of race came on for hearing in Davenport, Iowa on April 12, 1988, before lone G. Shadduck serving as Hearing Officer. The case in support of the complaint was presented by RICK AUTRY, Assistant Attorney General. Counsel for the parties clarified the record in that "Mr. Augland" of the caption is actually "ANGLUND" and is not considered a respondent in this case. Respondent, Fishercrest Apartments, was represented by R. DOUGLAS WELLS, Attorney at Law.

After having reviewed the record, the Hearing Officer makes the following findings of fact, conclusions of law, recommended decision and order.

FINDINGS OF FACT

1. The Complainant, OTIS PAYTON, timely filed verified complaint, CP# 03-87-15960 with the Iowa Civil Rights Commission on March 23, 1987, alleging a violation of Iowa Code section 601A.8, discrimination in housing on the basis of race, by Respondent Fishercrest Apartments.
2. The complaint was investigated, probable cause found, conciliation attempted but faded. Notice of Hearing was issued on December 251, 1987.
3. Harold Slagle and his wife, 6723 Northwest Boulevard, Davenport, Iowa, owned the Fishercrest-Yorktown-Georgetown apartment complex located at 3535 Main Street, Davenport, Iowa. The complex held 76 units. They employed Walter Tyler to manage the units with the authority to advertise for potential tenants, show units to potential tenants, decide to whom to rent, and to execute leases.

The Fishercrest apartment building has 28 units with the average tenant age over 60. Both Otis Payton and his wife Mary Payton fit in that age category.
4. Walter Tyler, the resident manager for Slagles for about three years, ran a continuous ad in the paper and kept a vacancy sign on the grounds. George Anglund was the building manager and covered for Tyler when he was absent but did not have rental authority.
5. The Paytons are a black couple who have been married for 35 years. In February 1987, they were looking for a quieter place to live. Otis Payton noticed the vacancy sign at Fishercrest.

noted the number to call and talked with his wife about renting an apartment there. Mary asked her daughter, Eva Saxton, to call the number for her. Saxton called Tyler and was told the apartment was available. Otis went to see the apartment and was shown the apartment, D5, 3535 Main Street, by George Anglund. Otis then asked if he could bring his wife back to look at it and was told he could. Otis and Mary then went back to look at it that afternoon. They asked to whom they should pay the security deposit and were told they would have to get the lease from and pay the deposit to Tyler. When they called Tyler, they were told that he had accepted a security deposit from a Chinese couple and would hold the apartment for that couple until Sunday. On Sunday, Mary called Tyler to see if the Chinese couple had taken the apartment. Tyler said he would give that couple until Monday. When the Paytons checked with Tyler on Monday, they were told the apartment had been rented. At this time, Saxton called Tyler again and was told that he did have an apartment available. Suspecting they were being excluded because they are black, they contacted their daughter-in-law, Vicky Haynes, who is white. Vicky, on February 24, 1987, called Tyler and was told there was a 2-bedroom apartment available. The next day, Vicky went to see the apartment, D5, informing Tyler that she wanted it for her in-laws. He accepted her \$50.00 deposit (Complainant's Exhibit 5). On February 25, 1987, she returned and paid the remaining \$150.00 on the deposit and \$319.00, for the first month's rent. She was also given receipts (Complainant's Exhibits 5 and 6) and two copies of the signed lease. The Paytons moved in on March 4, 1987.

6. The Payton experienced a lot of stress over this situation. They not only filed this complaint with the Commission, but contacted the NAACP for advice as to whether or not to move into the apartment. They were fearful and Mary had reoccurring migraine headaches and difficulty sleeping. Otis was recovering from a heart attack. He recalled with fear an incident ten years earlier where his brother and his brother's three kids were killed by the Klu Klux Klan. He felt "bad" about being turned down for the apartment which was readily rented to his white daughter-in-law.

7. Subsequent to moving in to the apartment, there have been no racial incidents and the Paytons have had no problems with the apartment.

8. Tyler, with about six years of property management experience, testified that he had accepted a cash deposit from an oriental couple just before he went to Iowa City for a day; that he did not take their name, address or phone number, that he did not give them a receipt. This was the couple for whom he said he was holding the vacant apartment. When the Paytons called and he said he was holding the apartment for this oriental couple, he took the Payton's phone number and said he would call them if the couple didn't show up. When Vicky came by with the deposit, he readily rented to her even though he said he was still holding the deposit of the oriental couple. He did not call the Paytons because he said he lost their phone number. Neither did he look up their number in the phone book. He said this unidentified oriental couple came back later and he returned their deposit.

9. The number of minorities in the apartment complex was alleged to have been increased under the management of Tyler. Respondent submitted six Affidavits of tenants who were minorities in their apartment complex. (Respondent's Exhibits A-F) It is noted that all but one were there prior to Tyler and the one who wasn't appears to have moved in after the filing of this complaint.

10. Tyler admits seeing the Paytons at least twice. He knew they were a black couple.

CONCLUSIONS OF LAW

1. The complaint, CP#03-87-15960 was timely filed, processed, and the issues in the complaint are properly before the Hearing Officer and ultimately before the Commission.

2. The applicable statutory authority is Iowa Code section 601A.8:

601A.8 Unfair or discriminatory practices - housing.

It shall be an unfair or discriminatory practice for any owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign or sublease any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, sex, religion, national origin or disability of such person.

2. To discriminate against any person because of the person's race, color, creed, sex, religion, national origin or disability, in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest therein.

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest therein, by persons of any particular race, color, creed, sex, religion, national origin or disability is unwelcome, objectionable, not acceptable or not solicited.

4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, disability, age or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity.

Harold Slagle owned Fishercrest Apartments. Walter Tyler, resident manager of Fishercrest Apartments, was an agent of owner Slagle. Otis Payton is black. He wished to rent an apartment at Fishercrest. He made known to Anglund and Tyler that he wanted an apartment and was willing and able to pay a deposit on an apartment, specifically apartment D5. Tyler knew the Paytons were a black couple. Tyler directly, through evasion, and indirectly, through failure to

contact, indicated that the rental of an apartment to a black couple was unwelcome, objectionable, not acceptable or not solicited. He readily rented that same apartment to a white person for her in-laws. He did not, nor could he have known that those in-laws were black. As a matter of fact, the in-laws were the Paytons. Such actions by Tyler, and thereby the Slagles, are unfair and discriminatory. It is unlawful to represent a unit is not available when in fact it is available. Havens v. Coleman, 455 U.S. 363(1982) Such actions are illegal under the Iowa Civil Rights Act. The defense used by Respondents that they were holding the apartment for a Chinese couple is not credible. The fact that the Paytons now live in Fishercrest does not erase the discrimination against them. The process of obtaining a lease through their white daughter-in-law negates any good faith rental policy as related to the Paytons. It is concluded that Payton has proved his case of discrimination and Respondent is in violation of Iowa Code §601A.8.

Complainant suffered no monetary damages. Complainant requests damages for emotional distress. The only evidence of emotional distress was the testimony of the Complainant and his wife Mary. It has been found that "humiliation can be inferred from the circumstances as well as established by testimony." Seaton v. Sky Realty Co., 491 F.2d 634, 636 (7th Cir. 1974). The underlying purposes of fair housing laws are to make housing available and to make the victim whole after experiencing discrimination. The size of damages has grown over the years, especially in the area of fair housing. in this case of issue, complainant requests \$5000.00 in damages and it is agreed that is a fair amount to award.

RECOMMENDED DECISION AND ORDER

1. Fishercrest Apartments violated Iowa Code section 601A.8 (1987) in discriminating against Otis Payton on the basis of race.
2. IT IS ORDERED that Harold Slagle, as owner of Fishercrest, cease and desist from the discriminatory practice of excluding black persons from the rental of units in his apartment complex and that he post Fair Housing notices in conspicuous places in his rental offices.
3. IT IS FURTHER ORDERED that Harold Slagle submit a report to the Iowa Civil Rights Commission within 60 days of the final order in this case outlining the number of units rented by black persons by apartment building and date of first rental.
4. IT IS FURTHER ORDERED, that Harold Slagle, as owner of Fishercrest Apartments, pay to OTIS PAYTON, \$5000.00 plus 10 % interest for annum from March 23, until paid in full.

Signed this 27th day of July 1988.

IONE G. SHADDUCK
Administrative Law Judge

FINAL ORDER

ON August 26, 1988, the Iowa Civil Rights Commission, at its regular meeting, adopted the Administrative Law Judge's proposed decision. The Commission decision is as follows:

DECISION AND ORDER

1. Fishercrest Apartments violated Iowa Code section 601A. 8 (1987) in discriminating against Otis Payton on the basis of race.
2. IT IS ORDERED that Harold Slagle, as owner of Fishercrest, cease and desist from the discriminatory practice of excluding black persons from the rental of units in his apartment complex and that he post Fair Housing notices in conspicuous places in his rental offices.
3. IT IS FURTHER ORDERED that Harold Slagle submit a report to the Iowa Civil Rights Commission within 60 days of the final order in this case outlining the number of units rented by black persons by apartment building and date of first rental.
4. IT IS FURTHER ORDERED, that Harold Slagle, as owner of Fishercrest Apartments, pay to OTIS PAYTON, \$5,000.00 plus 10% interest per annum. from March 23, 1987, until paid in full.

Signed this 14th day of September 1988.

RUBY ABEBE, CHAIRPERSON
Civil Rights Commission